



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 249 and 252**

**[Docket DARS-2019-0060]**

**RIN 0750-AK56**

**Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Notification of Anticipated Contract Termination or Reduction" (DFARS Case 2019-D019)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update legal and DFARS citations in an existing DFARS clause, conform the clause text to the current DFARS convention regarding the use of dollar thresholds in contract clauses; and remove clause text that is no longer needed to implement the underlying statutory language. The rule is pursuant to action taken by the DoD Regulatory Reform Task Force.

**DATES:** Effective **[Insert date of publication in the FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

DoD published a proposed rule in the *Federal Register* at 84 FR 58366 on October 31, 2019, to identify the dollar thresholds of the implementing statute (10 U.S.C. 2501 note) for DFARS 249.70 and DFARS clause 252.249-7002, Notification of Anticipated Contract Termination or Reduction, in accordance with current DFARS drafting conventions, and update the clause to reflect the current statute under which employee and training opportunities apply under the clause. No public comments were received in response to the proposed rule. Minor editorial changes are made in the final rule to a cross-reference at DFARS 252.249-7002(c)(2) and the formats of the statutory references.

### **II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, including Commercially Available Off-The-Shelf Items**

This rule does not create any new provisions or clauses. The rule simply updates legal and DFARS citations in the clause and removes unnecessary information. This rule does not change the applicability of the affected clause, which does not apply to contracts valued at or below the simplified acquisition threshold, or commercial or commercially available off-the-shelf items.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. Executive Order 13771**

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

#### **V. Regulatory Flexibility Act**

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of DFARS clause 252.249-7002, Notification of Anticipated Contract Termination or Reduction, to: (1) update legal and DFARS

citations in the clause; (2) remove text that is no longer necessary to implement 10 U.S.C. 2501 note; and (3) conform the clause text to the current DFARS convention for referencing dollar thresholds in a clause. The objective of this rule is to provide accurate and up-to-date information to contractors and maintain consistency within the DFARS clause text. The modification of this DFARS text and clause is pursuant to action taken by the Regulatory Reform Task Force under Executive Order 13777, Enforcing the Regulatory Reform Agenda.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD does not collect data on the number of small businesses that have been awarded contracts under a major defense programs and have also received notice of contract termination or a substantial reduction in funding resulting from an Appropriations Act. Senior DoD Program Acquisition officials estimate that such notification of the termination or substantial reduction in a major defense program occurs, on average, no more than once or twice per year. This rule is not expected to have a significant impact on small business entities, as it does not impose any new requirements or change any existing requirements for small business entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

DoD did not identify any significant alternatives that would minimize or reduce the significant economic impact, because there is no significant impact on small entities.

## **VI. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, the changes to DFARS 252.249-7002 do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0533, titled: DFARS Subpart 249-Termination of Contracts.

### **List of Subjects in 48 CFR Parts 249 and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 249 and 252 are amended as follows:

#### **PART 249—TERMINATION OF CONTRACTS**

1. The authority citation for part 249 is revised to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Amend section 249.7003 by—

a. In paragraph (a), removing “Section 824” and “Job Training Partnership Act (29 U.S.C. 1661 and 1662)” and adding “section 824” and “Workforce Innovation and Opportunity Act (29 U.S.C. Chapter 32)” in their places, respectively;

- b. In the paragraph (b) introductory text, removing "to:" and adding "to—" in its place;
- c. In paragraph (b)(1), removing "act." And adding "act; and" in its place;
- d. Revising paragraph (c).

The revision reads as follows:

**249.7003 Notification of anticipated contract terminations or reductions.**

\* \* \* \* \*

(c) When subcontracts have been issued, the prime contractor is responsible for—

(1) Providing notice of the termination or substantial reduction in funding to all first-tier subcontractors with a subcontract valued equal to or greater than \$700,000; and

(2) Requiring that each subcontractor—

(i) Provide such notice to each of its subcontractors for subcontracts valued greater than \$150,000; and

(ii) Impose a similar notice and flowdown requirement in subcontracts valued greater than \$150,000 at all tiers.

3. Add section 249.7004 to read as follows:

**249.7004 Contract clause.**

Use the clause at 252.249-7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.

## **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. The authority citation for part 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

5. Amend section 252.249-7002 by—

- a. In the introductory text, removing “249.7003(c)” and adding “249.7004” in its place;
- b. Removing the clause date “(MAY 2019)” and adding “(JUN 2020)” in its place;
- c. Revising paragraphs (b) and (c);
- d. In paragraph (d)(1), removing “225.870-4(c)(2)(i)(A)(1)” and adding “249.7003(c)(1)” in its place;
- e. In paragraphs (d)(2)(i) and (ii), removing “225.870-4(c)(2)(i)(C)” and adding “249.7003(c)(2)(i)” and “249.7003(c)(2)(ii)” in their place, respectively; and
- f. Removing paragraph (e).

The revisions read as follows:

### **252.249-7002 Notification of Anticipated Contract Termination or Reduction.**

\* \* \* \* \*

(b) *Scope.* This clause implements section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) and section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201), which are intended

to help establish benefit eligibility under the Workforce Innovation and Opportunity Act (29 U.S.C. chapter 32) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

(c) *Notice to employees and state and local officials.* (1)

Within 2 weeks after the Contracting Officer notifies the Contractor that contract funding will be terminated or substantially reduced, the Contractor shall provide notice of such anticipated termination or reduction to—

(i) Each employee representative of the Contractor's employees whose work is directly related to the defense contract; or

(ii) If there is no such representative, each such employee;

(iii) The State or entity designated by the State to carry out rapid response activities described in the Workforce Innovation and Opportunity Act (29 U.S.C. 3174(a)(2)(A)(i)); and

(iv) The chief elected official of the unit of general local government within which the adverse effect may occur.

(2) The notice provided an employee under paragraph (c)(1) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and



employment services under the Workforce Innovation and Opportunity  
Act (29 U.S.C. Chapter 32).

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